

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE
WHOLESALE PRICE LITIGATION

MDL No. 1456

C.A. No. 01-12257-PBS

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

ALL ACTIONS

MOTION FOR CONTINUANCE OF SANCTIONS
HEARING SCHEDULED FOR JUNE 21, 2010

Donald E. Haviland, Jr., counsel for Larry Young, on behalf of the Estate of Patricia Young, and Ken Wright, co-executor of the Estate of Therese Shepley, on behalf of the same, respectfully moves this Court for an Order Continuing the Hearing on Class Counsel's Motion for Sanctions currently scheduled for Monday June 21, 2010, and in support thereof, states as follows:

1. On April 16, 2010, Class Counsel moved for an Order entering sanctions against Mr. Haviland based on the filing of a Notice of Voluntary Dismissal pertaining to the individual claims of Plaintiffs Larry Young, on behalf of the Estate of Patricia Young, and Ken Wright, the co-executor of the Estate of Therese Shepley, on behalf of the Estate of James Shepley ("Plaintiffs Shepley and Young").
2. The Court scheduled a 23(e) Dismissal Hearing for May 3, 2010.
3. On April 28, 2010, Class Counsel moved to vacate the May 3rd hearing. This Court entered an electronic order on April 30, 2010, vacating the May 3 hearing on the Notice of Voluntary Dismissal and scheduling a hearing on the Motion for Sanctions for June 21, 2010.
4. On May 19, 2010, this Court entered Case Management Order No. 33, requiring that Withdrawing Plaintiffs file a motion seeking court approval to voluntarily dismiss their claims against

the J&J Defendants. That motion is filed concurrently with the instant Motion for a Continuance. Withdrawing Plaintiffs do not anticipate any opposition to that Motion since Class Counsel has already filed a Motion to Add Class Representative for the J&J Defendants seeking to have Mrs. Jimmie Austed added as a Class 1 representative for the J&J Defendants. *See* Dkt No. 7128.

5. The lingering question remaining is Class Counsel's desire for unspecified sanctions against Mr. Haviland based upon an unfounded belief about impropriety.

6. As Class Counsel is aware, Mr. Haviland is lead counsel for the Commonwealth of Pennsylvania in the state Pennsylvania AWP litigation, *Commonwealth of PA. v. TAP Pharmaceuticals*, 212-MD-2004 (Cmwlth.) ("PA AWP"). There are currently seven (7) corporate families of Defendants in the PA AWP case.

7. By directive of the Discovery Master, fact discovery in the PA AWP case is currently scheduled to close on June 30, 2010, and, by Court Order, trial is set to begin August 9, 2010. Currently, the Commonwealth has approximately 130 outstanding deposition notices and/or subpoena's of fact witnesses to be completed on or before June 30, 2010.

8. Specifically, as presently scheduled, the Commonwealth will be conducting fourteen (14) depositions the week of June 21, 2010. There are four (4) depositions scheduled for Tuesday June 22, 2010; two (2) depositions scheduled for Wednesday June 23, 2010; five (5) depositions scheduled for Thursday June 24, 2010; and four (4) depositions scheduled for Friday June 25, 2010. Based upon prior experience, and due to coordination of discovery depositions with other litigating States, there is a very real possibility that one or more of these depositions will be continued a second day. Because of the importance of many of the fact witnesses to be deposed that week, Mr. Haviland is personally conducting several of the depositions scheduled to take place that week. He will also

be preparing for the court-ordered mediation sessions and pre-trial conference scheduled for the following week.

9. On May 20, 2010, the trial court in the PA AWP case entered Scheduling Order No. 1, which adopted Chapter V of the Local Rules of the United States District Court for the Middle District of Pennsylvania and scheduled a jury trial at the Northampton County Courthouse for August 9, 2010. *See* Scheduling Order No. 1, attached as Exh. "A".

10. In light of the significant time constraints imposed on the PA AWP litigation, and counsel's necessarily busy schedule attempting to complete fact discovery by the June 30, 2010, the undersigned respectfully requests a continuance for the hearing on Class Counsel's Motion for Sanctions until a date after the June 30, 2010 deadline for fact discovery in the PA AWP. Having tried several of these actions, this Court is acutely aware of the time and attention required to prepare a case for trial, especially a case involving the trial of seven (7) corporate families.

11. In addition, because movants' request for sanctions will necessarily involve the presentation of evidence in support and defense thereof, the undersigned requests that the Motion be continued to a future date beyond the trial in Pennsylvania, which date will allow sufficient time for an evidentiary hearing on all issues. As presently scheduled, the hearing set for 4:00 p.m. Monday will not allow the parties to complete their evidentiary proffers that day, necessarily requiring an additional hearing date. At a minimum, based upon the factual averments in the Motion, the undersigned expects to call as witnesses on cross-examination the following material fact witnesses: Steve Berman, Tom Sobol and Jennifer Connolly. If the instant request for continuance is not granted, Notices for the attendance of witnesses will be issued.

WHEREFORE, the undersigned respectfully moves the Court for an Order Continuing the Hearing on Class Counsel's Motion for Sanctions Currently Scheduled for Monday June 21, 2010.

Dated: June 16, 2010

By: /s/ Donald E. Haviland, Jr.
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Counsel for Plaintiffs Larry Young and Ken Wright, co-executor of the estate of Therese Shepley

CERTIFICATE OF SERVICE

I, Donald E. Haviland, Jr., Esquire, hereby certify that on, June 16, 2010, I filed the Motion for Continuance of Sanctions Hearing Scheduled for June 21, 2010 with the Clerk of this Court and used the CM/ECF system to send notification of such filing to all registered person(s).

/s/ Donald E. Haviland, Jr.